



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services - Public Affairs/Division of Vocational Rehabilitation

☒ **Preproposal Statement of Inquiry was filed as** WSR 06-19-077; or
☐ **Expedited Rule Making--Proposed notice was filed as** WSR _____; or
☐ **Proposal is exempt under** RCW 34.05.310(4).

☒ **Original Notice**
☐ **Supplemental Notice to WSR**
☐ **Continuance of WSR**

Title of rule and other identifying information:

WAC 388-890 Rehabilitation Services for Individuals with Disabilities (Independent Living Program – Title VII, Part B); and relevant sections of WAC 388-891 Vocational Rehabilitation Services for Individuals with Disabilities. See Attachment A.

Hearing location(s):

Blake Office Park East – Rose Room
4500 – 10th Ave. SE
Lacey, Washington 98503
(One block north of the intersection of Pacific Ave. SE and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling 360-664-6097)

Date: **February 27, 2007** Time: **10:00 a.m.**

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850, Olympia WA, 98504
Delivery: 4500 - 10th Ave. SE, Lacey, WA 98503
E-mail: schilse@dshs.wa.gov
Fax: (360) 664-6185
by **5:00 p.m. on February 27, 2007**

Date of intended adoption: Not earlier than February 28, 2007. (Note: This is **NOT** the effective date)

Assistance for persons with disabilities: Contact Stephanie Schiller, DSHS Rules Consultant by February 23, 2007
TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
See Attachment B.

Reasons supporting proposal:
See Attachment B.

Statutory authority for adoption:

RCW 74.29.020;
RCW 74.08.090

Statute being implemented:

August, 1998 Amendments to the Rehabilitation Act of 1973; 34 CFR Part 361 & 34 CFR Part 363; Chapter 74.29 RCW

Is rule necessary because of a:

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Federal Law?	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Federal Court Decision?	<input checked="" type="checkbox"/> No
<input type="checkbox"/> State Court Decision?	<input checked="" type="checkbox"/> No

If yes, CITATION:

August 1998 Amendments to the Rehabilitation Act of 1973; 34 CFR Part 361 & 34 CFR Part 363

DATE

NAME (type or print)
Andy Fernando

SIGNATURE

TITLE
Manager, Rules and Policies Assistance Unit

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

DEC 29 2006

TIME

WSR

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: Department of Social and Health Services

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting: Michael Cunningham, Program Administrator	DVR, PO Box 45340, Olympia, WA 98504-5340 e-mail cunnim@dshs.wa.gov	(360) 725-3621
Implementation: Lynnae Rutledge, Director	DVR PO Box 45340, Olympia, WA 98504-5340	(360) 725-3618
Enforcement.: Lynnae Rutledge, Director	DVR PO Box 45340, Olympia, WA 98504-5340	(360) 725-3618

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

☒ No. Explain why no statement was prepared.

DSHS/Division of Vocational Rehabilitation has analyzed the proposed rule changes and concludes that they will impose no new or disproportionate costs on small businesses. The preparation of a comprehensive SBEIS is not required.

Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Michael Cunningham, Program Administrator

Address: Division of Vocational Rehabilitation

PO Box 45340

Olympia, WA 98504-4350

phone (360) 725-3621

fax (360) 407-3942

e-mail cunnim@dshs.wa.gov

☐ No: Please explain:

TITLE OF RULE:

Chapter 388-891 WAC – Vocational Rehabilitation Services for Individuals with Disabilities

PROPOSED NEW WAC NUMBERS AND CAPTIONS:

388-891-0103 Can DVR obtain personal information about you?

388-891-1137 What if the employment goal I choose is religious in nature?

PROPOSED AMENDED WAC NUMBERS AND CAPTIONS

388-891-0140 Can I obtain copies of information in my case service record?

388-891-0255 How do I request a fair hearing?

388-891-0330 Does DVR consider academic awards and scholarships as income?

388-891-0360 What personal resources are not counted in the decision about whether I have to help pay for services?

388-891-0520 What is the criteria for Priority Category 1 -- Individuals with Most Severe Disabilities?

388-891-0530 What is the criteria for Priority Category 2 – Individuals with Severe Disabilities?

388-891-0540 What is the criteria for Priority Category 3 – Individuals with Disabilities?

388-891-0840 What are supported employment services?

388-891-0880 What happens if my DVR counselor and I do not find a source for extended services and/or we cannot establish natural supports during the initial 18 months of my individualized plan for employment?

388-891-1300 Why does DVR close a case service record?

PROPOSED WAC NUMBER AND CAPTION TO BE REPEALED

388-891-0870 Are supported employment services time-limited?

TITLE OF RULE:**Chapter 388-890 WAC - Rehabilitation Services for Individuals with Disabilities,****PROPOSED WAC NUMBERS AND CAPTIONS TO BE REPEALED:**

- 388-890-0780 What is the independent living (IL) program?
- 388-890-0785 What types of services does the IL program offer?
- 388-890-0790 Who is eligible for Title VII IL program services?
- 388-890-0795 What is a significant disability?
- 388-890-0800 Who provides IL program services?
- 388-890-0805 What are my responsibilities in the IL program?
- 388-890-0810 How do I apply for IL program services?
- 388-890-0815 What happens after I submit my application for IL program services?
- 388-890-0820 Who decides if I am eligible for IL program services?
- 388-890-0825 Where does the IL program get the information needed to decide if I am eligible?
- 388-890-0830 How do I find out if I am eligible for IL program services?
- 388-890-0835 What if I disagree with a decision about my eligibility for IL or a decision about IL program services?
- 388-890-0840 Under what conditions can I get IL program services?
- 388-890-0845 How are my IL program services planned?
- 388-890-0850 What is included on a written or verbal IL plan?
- 388-890-0855 Who signs and keeps a written IL plan?
- 388-890-0860 How often is my IL plan reviewed?
- 388-890-0870 What are IL advocacy services?
- 388-890-0875 What are IL rehabilitation technology services?
- 388-890-0880 What are IL communication services?
- 388-890-0885 What are IL counseling services?
- 388-890-0890 What are IL housing services?
- 388-890-0895 Are IL program payments for home modifications limited?
- 388-890-1000 What is IL skills training?
- 388-890-1005 What are IL information and referral services?
- 388-890-1010 What is IL peer counseling?
- 388-890-1015 What is IL mobility training?
- 388-890-1020 What is IL personal assistance training?
- 388-890-1025 Does the IL program pay for attendant services as part of personal assistance training?
- 388-890-1030 What are IL physical rehabilitation services?
- 388-890-1035 What are IL preventive services?
- 388-890-1040 What are IL recreational services?
- 388-890-1045 What are IL program services to family members?
- 388-890-1050 What are IL therapeutic services?
- 388-890-1055 What are IL transportation services?
- 388-890-1060 What other services does the IL program offer?
- 388-890-1065 How long can I receive independent living services?
- 388-890-1070 Why does the IL program stop providing or paying for IL program services?
- 388-890-1075 Am I involved in the decision to stop receiving IL program services?
- 388-890-1080 How does the IL program notify me that my services are stopping?
- 388-890-1085 If the IL program decides I am not eligible for IL program services, is the decision reviewed?
- 388-890-1090 Does the IL program keep a record of my IL program services?
- 388-890-1095 Does the IL program keep personal information confidential?

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The proposed rules are intended to comply with the Rehabilitation Act of 1973 as amended in August, 1998 including Title I Vocational Rehabilitation Services; Title VI Employment Opportunities for Individuals with Disabilities; 34 Code of Federal Regulations Part 361 and Part 363 and RCW 74.29.020 (8) for rehabilitation services for individuals with disabilities. The proposed rules are also intended to comply with 45 Code of Federal Regulations Part 160 to Part 164 for disclosure of public records and access to DSHS records; the Washington State Constitution, Article I, Section 11 prohibiting state funds to pay for religious education or training in support of an employment goal that is religious in nature.

The proposed rules are intended to support the Division of Vocational Rehabilitation's (DVR's) mission to help people with disabilities go to work. The proposed rules are also intended to inform the public about DVR's vocational rehabilitation (VR) services and the conditions under which DVR provides them. The rule changes affect DVR customers, contractors and service providers. Major areas covered include: Independent Living Program Title VII, Part B; Individualized Plan for Employment; Comparable Benefits; Customer Financial Participation in the Cost of Services; Supported Employment; Order of Selection; Case Closure; and Use of Confidential Information.

Major content changes include:

- Repealing WACs for the Title VII, Part B Independent Living Program. DVR has not directly provided Title VII, Part B Independent Living Services since February 2003. These services have been, and will continue to be contracted; the WACs governing these services are not relevant to the business DVR does with the contractors.
- Adding a rule to prohibit DVR from supporting education or training for an employment goal that is religious in nature.
- Amending a rule to indicate that academic awards and scholarships based on merit are not considered comparable benefits.
- Amending a rule to clarify that while academic awards and scholarships based on merit are not considered comparable benefits, they may be considered as personal resources when determining the customer's ability to pay for services.
- Amending a rule to clarify that a supported employment case can be closed before 18 months of service when it is determined there is no reasonable expectation that a source of funding for extended services will become available and that natural supports are not available.
- Repealing a rule about the 18 month time-limited supported employment services and including the 18 month time-limit in another rule.

- Amending a rule by removing supported employment (type of service) as criteria for Category 1 – Individuals with Most Severe Disabilities. Also, terms are added to describe serious functional losses.
- Amending a rule by removing a reference to receiving Social Security benefits as criteria for Priority Category 2 – Individuals with Severe Disabilities. Also, terms are added to describe functional losses.
- Amending a rule to clarify a reason for closing a supported employment case when options for extended services or natural supports will not become available.
- Amending a rule to no longer require a customer to submit a written request to review or obtain copies from his/her case service record. Also, to require other agencies or service providers that provide personal information about a customer to inform DVR of the conditions under which DVR can share that personal information.
- Adding a new rule to
 - Clarify the reasons why DVR may obtain specific personal information about the customer;
 - Allow DVR to obtain specific personal and financial information with or without the customer's consent; and
 - Clarify that information collected by DVR from service providers or other agencies will not be released to others without the customer's written consent.

Reasons supporting proposal:

The proposed rules eliminate unnecessary rules, clarify other rules, and incorporate policies into rules where appropriate. The proposed rules increase compliance with the intent of Federal and State laws and protect program funding. The proposed rules support practices that are likely to increase funding availability for services to customers, increase the number of customers served, decrease the length of time customers have to wait for services, increase the protection of customer personal information and increase customer satisfaction.

NEW SECTION

WAC 388-891-0103 Can DVR obtain personal information about you? (1) In order to serve you, DVR may obtain personal information about you from service providers and cooperating agencies. This personal information helps us better understand your disabilities, barriers to employment, abilities, interests and needs for VR services and to coordinate DVR services with the services you receive from other agencies and programs.

(2) DVR may obtain financial information about you from state and federal agencies to verify benefits you receive from other agencies or programs, earnings and income from employment or self-employment. DVR will only collect such information if the state or federal agencies have legal authority to release it to DVR. This may occur with or without your consent.

(3) If DVR collects information about you from service providers or other agencies, the information will not be released to others without your written consent.

AMENDATORY SECTION (Amending WSR 03-02-014, filed 12/20/02, effective 2/3/03)

WAC 388-891-0140 Can I obtain copies of information in my case service record? (1) You may review or obtain copies of information contained in your case service record by submitting a ((written)) request to DVR. DVR provides access to or provides copies of records upon request, except in the following circumstances:

(a) If DVR believes the medical, psychological, or other records in your case service record may be harmful to give to you, DVR only releases the records to a third party that you choose, such as your representative, parent, legal guardian or a qualified medical professional.

(b) If DVR receives personal information about you from another agency or service provider, DVR may ((only)) share the records ((as authorized)) only by, or under the conditions established by the agency or service provider that provided the information.

(c) If a representative has been appointed by a court to represent you, the information must be released to the representative.

(2) DVR provides access or gives you copies of records within ((ten)) five business days of receiving your ((written)) request. If DVR cannot fulfill your request within ((ten)) five business days, DVR will send you a written notice of the reason(s) the request cannot be met and the date you are granted access or the

date the requested information will be provided.

AMENDATORY SECTION (Amending WSR 03-02-014, filed 12/20/02, effective 2/3/03)

WAC 388-891-0255 How do I request a fair hearing?

(1) To ask for a fair hearing, send a written request to the office of administrative hearings. You must include the following information in your written request:

- (a) Your name, address, and telephone number;
- (b) The name of the DSHS program that the fair hearing involves (such as DVR);
- (c) A written statement describing the decision and the reasons you disagree; and
- (d) Any other information or documents that relate to the matter.

(2) You must submit your request for a fair hearing within ~~((twenty))~~ forty-five calendar days of the date the VR counselor makes the decision with which you disagree.

(3) You may ask any DVR employee for instructions or assistance to submit a request for a fair hearing.

AMENDATORY SECTION (Amending WSR 03-02-014, filed 12/20/02, effective 2/3/03)

WAC 388-891-0330 Does DVR consider academic awards and scholarships based on merit as ~~((income))~~ comparable benefits? DVR does not consider academic awards and scholarships ((you earn)) based on merit ((are not counted as income for purposes of determining your participation in the cost of services)) as comparable benefits.

AMENDATORY SECTION (Amending WSR 03-02-014, filed 12/20/02, effective 2/3/03)

WAC 388-891-0360 What personal resources are not counted in the decision about whether I have to help pay for services? DVR does not count the following resources when deciding whether you need to help pay for DVR:

- (1) The value of your primary home and furnishings;
- (2) The value of items that you keep because of personal attachment, rather than because of monetary value;
- (3) The value of one vehicle per household member needed for

work, school, or to participate in VR services;

(4) Retirement, insurance, or trust accounts that do not pay a current benefit to you or your family;

(5) If a retirement, insurance or trust account pays a current benefit, only the monthly benefit is counted as income and the balance of the account is excluded;

(6) ~~((Awards or scholarships you earn based on merit, ~~(7)~~))~~ Up to five thousand dollars of your total assets are excluded as exempt;

~~((8))~~ (7) Equipment or machinery used to produce income;

~~((9))~~ (8) Livestock used to produce income; and

~~((10))~~ (9) Disability-related items and/or services.

AMENDATORY SECTION (Amending WSR 03-02-014, filed 12/20/02, effective 2/3/03)

WAC 388-891-0520 What is the criteria for priority category 1--Individuals with most severe disabilities? DVR determines you are in priority category 1--Individuals with most severe disabilities, if you are determined eligible for vocational rehabilitation services and you meet the following criteria:

(1) ~~((You require supported employment; and/or~~

~~(2) You meet the criteria for an individual with a severe disability as defined in WAC 388-891-0530;))~~ You require two or more VR services over an extended period of time (twelve months or more); and

(2) You experience serious functional losses in four or more of the following areas in terms of an employment outcome:

(a) Mobility;

(b) Communication;

(c) Self-care;

(d) Cognition and learning (Self-direction);

(e) Interpersonal ~~((skills))~~;

(f) Work tolerance; or

(g) Work skills.

AMENDATORY SECTION (Amending WSR 03-02-014, filed 12/20/02, effective 2/3/03)

WAC 388-891-0530 What is the criteria for priority category 2--Individuals with severe disabilities? DVR determines you are in priority category 2--Individuals with severe disabilities if you are determined eligible for vocational rehabilitation services and you meet the following criteria:

(1) ~~((You are receiving disability benefits under Title II or Title XVI of the Social Security Act, but do not meet the criteria for priority category 1; and/or~~

~~(2) You meet the eligibility requirements outlined in WAC 388-891-0540,)) You require two or more VR services over an extended period of time (twelve months or more); and((7))~~

(2) You experience serious functional losses in one to three of the following areas in terms of an employment outcome:

- (a) Mobility;
- (b) Communication;
- (c) Self-care;
- (d) Cognition and learning (Self-direction);
- (e) Interpersonal ((skills));
- (f) Work tolerance; or
- (g) Work skills.

AMENDATORY SECTION (Amending WSR 03-02-014, filed 12/20/02, effective 2/3/03)

WAC 388-891-0540 What is the criteria for priority category 3--Individuals with disabilities? DVR determines you are in priority category 3--Individuals with disabilities if you ((~~meet the eligibility requirements outlined in WAC 388-891-1000~~)) are determined eligible for vocational rehabilitation services, but you do not meet the criteria for priority category 1 or priority category 2.

AMENDATORY SECTION (Amending WSR 03-02-014, filed 12/20/02, effective 2/3/03)

WAC 388-891-0840 What are supported employment services? Supported employment services are:

(1) Ongoing support services as described in WAC 388-891-0845; and

(2) Vocational rehabilitation services listed in WAC 388-891-0600.

(3) These services may be provided to you:

- (a) As part of your individualized plan for employment;
- (b) To support and maintain you in supported employment;
- (c) For a period of time not to exceed eighteen months, unless under special circumstances, you and the VR counselor jointly agree to extend the time in order to achieve the employment goals in your rehabilitation plan for employment. This eighteen month period begins on the date when the delivery of ongoing support services start to be provided under your individualized plan for employment.

AMENDATORY SECTION (Amending WSR 03-02-014, filed 12/20/02, effective 2/3/03)

WAC 388-891-0880 What ((happens)) if my ((DVR)) counselor and I ~~((do not find a source for extended services and/or we cannot establish natural supports during the initial eighteen months of my individualized plan for employment))~~ cannot secure a source of extended services or natural supports? ~~((If you and your DVR counselor do not find a source for extended services and/or cannot establish natural supports during the initial eighteen months of your individualized plan for employment, DVR must determine that you are no longer eligible for VR services))~~ If a DVR counselor determines that you require supported employment and has explored all available options for securing a source of funding for extended services or natural supports and there is no reasonable expectation that those services will become available, DVR must close your case service record.

NEW SECTION

WAC 388-891-1137 What if the employment goal I choose is religious in nature? DVR is prohibited from supporting education or training for an employment goal that is religious in nature under the Washington State Constitution, Article 1, Subsection 11.

AMENDATORY SECTION (Amending WSR 03-02-014, filed 12/20/02, effective 2/3/03)

WAC 388-891-1300 Why does DVR close a case service record?
A DVR counselor closes your case service record for any of the following reasons:

- (1) You achieve an employment outcome;
- (2) DVR determines that you are not eligible or no longer eligible;
- (3) You are no longer available to participate in services;
- (4) You decline VR services;
- (5) You cannot be located;
- (6) You ask DVR to close your case service record; ((or))
- (7) You refuse to cooperate in required or agreed upon conditions or services; or
- (8) You require supported employment services and you and your VR counselor have explored all available options for securing a source of funding for extended services or natural supports and there is no reasonable expectation these services will become available.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-891-0870	Are supported employment services time-limited?
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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-890-0780	What is the independent living (IL) program?
WAC 388-890-0785	What types of services does the IL program offer?
WAC 388-890-0790	Who is eligible for Title VII IL program services?
WAC 388-890-0795	What is a significant disability?
WAC 388-890-0800	Who provides IL program services?
WAC 388-890-0805	What are my responsibilities in the IL program?
WAC 388-890-0810	How do I apply for IL program services?
WAC 388-890-0815	What happens after I submit my application for IL program services?
WAC 388-890-0820	Who decides if I am eligible for IL program services?
WAC 388-890-0825	Where does the IL program get the information needed to decide if I am eligible?
WAC 388-890-0830	How do I find out if I am eligible for IL program services?
WAC 388-890-0835	What if I disagree with a decision about my eligibility for IL or a decision about IL program services?
WAC 388-890-0840	Under what conditions can I get IL program services?
WAC 388-890-0845	How are my IL program services planned?
WAC 388-890-0850	What is included on a written or verbal IL plan?
WAC 388-890-0855	Who signs and keeps a written IL plan?
WAC 388-890-0860	How often is my IL plan reviewed?
WAC 388-890-0870	What are IL advocacy services?
WAC 388-890-0875	What are IL rehabilitation technology services?
WAC 388-890-0880	What are IL communication services?
WAC 388-890-0885	What are IL counseling services?
WAC 388-890-0890	What are IL housing services?

WAC 388-890-0895	Are IL program payments for home modifications limited?
WAC 388-890-1000	What is IL skills training?
WAC 388-890-1005	What are IL information and referral services?
WAC 388-890-1010	What is IL peer counseling?
WAC 388-890-1015	What is IL mobility training?
WAC 388-890-1020	What is IL personal assistance training?
WAC 388-890-1025	Does the IL program pay for attendant services as part of personal assistance training?
WAC 388-890-1030	What are IL physical rehabilitation services?
WAC 388-890-1035	What are IL preventative services?
WAC 388-890-1040	What are IL recreational services?
WAC 388-890-1045	What are IL program services to family members?
WAC 388-890-1050	What are IL therapeutic services?
WAC 388-890-1055	What are IL transportation services?
WAC 388-890-1060	What other services does the IL program offer?
WAC 388-890-1065	How long can I receive independent living services?
WAC 388-890-1070	Why does the IL program stop providing or paying for IL program services?
WAC 388-890-1075	Am I involved in the decision to stop receiving IL program services?
WAC 388-890-1080	How does the IL program notify me that my services are stopping?
WAC 388-890-1085	If the IL program decides I am not eligible for IL program services, is the decision reviewed?
WAC 388-890-1090	Does the IL program keep a record of my IL program services?
WAC 388-890-1095	Does the IL program keep personal information confidential?